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**(1995) 11 RAJ CK 0051**

**In the Rajasthan High Court**

**Case No :** .C.S.A. (W) No's. 6248/93, 335 and 337 to 339/94 and 179/95

Rajasthan Trade Union Kendra

APPELLANT

Vs

J.K. Synthetics Ltd. and Others

RESPONDENT

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**Date of Decision :** 13-11-1995

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 10H, 25F, 25FFA, 25M, 25N

**Citation :** (1996) 2 LLJ 347 : (1996) 1 WLC 418

**Hon'ble Judges :** A.P. Ravani, C.J.;Y.R. Meena, J

**Bench :** Division Bench

**Advocate :** B.L. Samdaria, D.R. Divedi, Mohan Punamia and Suresh Kashyap, for the Appellant; Ashok Desai and P.H. Pareek, for the Respondent

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## **Judgement**

This Judgment has been overruled by : J.K. Synthetics Vs. Rajasthan Trade Union Kendra and Others, AIR 2001 SC 531 : (2001) 88 FLR 682 : (2001) 1 JT 363 : (2001) 1 LLJ 561 : (2000) 8 SCALE 329 : (2001) 2 SCC 87 : (2001) SCC(L&S) 329 : (2000) 5 SCR 552 Supp : (2001) 1 UJ 520 : (2001) AIRSCW 140 : (2000) 8 Supreme 482

A.P. Ravani, C.J.—On January 10, 1983, JK Synthetics Ltd. declared lay off in all its four Plants at Kota. Almost simultaneously the Company retrenched 2367 workmen engaged therein. The roots of this litigation are in the aforesaid events. The principal question which has surfaced for determination by the Court is - Has the Industrial Tribunal jurisdiction to raise and adjudicate issue regarding "closure" of a part of a plant in absence of any point of dispute in this behalf having been referred to it. This and other related questions are required to be examined and answered by the Court in these matters.

2. All these matters pertain to the industrial disputes which arose between J.K. Synthetics Ltd., Kota (hereinafter referred to as "the Company") and its workmen. At the request and with the consent of the Learned Counsel appearing for the parties, all these matters have been heard together and they are being disposed of by this common judgment and order.

## Factual background

3. The company was incorporated as an investment company sometime in May 1953. It started manufacturing operations at Kota in Rajasthan in March 1962 by commencing its Nylon Plant. It has three other Plants viz. Tyre Cord Plant, Synthetic Staple Fibre Plant and Acrylic Plant, at Kota. It has a cement complex in District Chittorgarh and it has also engineering facilities at Calcutta, Kanpur and Dadri. All these matters are in relation to the four plants at Kota. The total strength of workmen employed in these plants, as in December 1982 was as follows:-

Name of the Plant/ Division Total No. of permanent workmen employed

1 . Nylon Plant/Div. engaged in POY/HOY Yarn Process Nylon Plant/Div. (engaged in texturising, crimping and other process) 2209 1164

2. Tyre Cord Plant/Division 660

3. Synthetic Staple Fibre Plant/Division 703

4. Acrylic Plant/Division 527

Total 5263

Nylon Plant of the Company was started in the year 1962 and it is the oldest Plant. The other plants viz. Tyre Cord Plant and Synthetic Staple Fibre Plant were started in the year 1971. In the year 1980, the company started fourth plant called Acrylic plant.

4. On January 10, 1983, the company declared lay off in all the four Plants at Kota on the ground that 100% power cut was declared by the Rajasthan State Electricity Board on January 9, 1983. The lay off was lifted in phases commencing from February 6, 1983 to February 17, 1983. Immediately after declaration of lay off by notices dated January 15, 1983 and January 17, 1983 services of 2367 workmen were terminated as per the details herein below:

a. Nylon Plant/Division 1878

b. Nylon Tyre Cord Plant/Division 148

c. Synthetic Staple Fibre Plant 251

d. Acrylic Fibre Plant /Division 90

Total 2367

Thus, services of around 45% of the total work force were terminated as and by way of retrenchment. As a mark of protest and in order to show resentment against the action of mass retrenchment, the workmen did not join duty from February 17, 1983 even after the lay off was lifted by the company.

5. By January 21, 1983 i.e. after effecting retrenchment, the company informed

the secre-tary, Labour Department, State Government of Rajasthan about the action of retrenchment of workmen. It was inter alia stated that the information was given u/s 25F (c) of the Industrial Disputes Act, 1947 (hereinafter referred to as "the Act"). The company stated reasons for retrenchment in Annexure-A to the letter. It gave details with regard to each plant. In short, as regards Nylon Plant, it submitted that the company had decided to discontinue the processes of crimping, twisting, texturing, draw texturising, dyeing, coning and their inter-connected processes, as they had become unremu-nerative. Therefore 1149 workmen of Nylon Plant were rendered surplus and were required to be retrenched. As regards other Plants also the company gave details about the financial position and stated that in the interest of continuity of business, it had decided to effect economy in its operations. Therefore, it has become necessary to retrench the services of the surplus work force. In Annexure -B to the letter, the Company gave particulars of the workmen who were retrenched.

5. (A) On receipt of the letter, the Labour Commissioner, cum Deputy Secretary to the Government by letter dated January 25, 1983 called upon the Company to appear before him and explain the following points:

Why the procedure detailed u/s 25N (c) of Chapter V-B of the Act, was not adopted before resorting to the retrenchments.

Furnish the detailed information justifying the causes mentioned in Annexure-A to the letter of the company dated January 21, 1983.

6. The company submitted reply vide its letter dated February 1, 1983. It stated that as per legal advice it had been advised that Section 25N of the Act was unconstitutional. It was so declared by the Madras High Court. It further stated that by serving notice u/s 25F of the Act read with Rule 76 of the Rajasthan Industrial disputes Rules, 1958 (for short "the Rules of 1958"), it had substantially complied with the provisions of law. The company referred to each of its four plants separately and gave details with regard to the competition faced in the market. It gave details regarding demand and supply position as well as projected demand and supply of the articles manufactured by it. In short, the stand of the company was that on account of fierce competition and due to losses suffered by it and in the interest of continuity of business, it has effected retrenchment on mass scale.

7. The Rajasthan Trade Union Kendra (hereinafter referred to as "the RTUK") which represented a section of workmen, filed SB Civil Writ Petition No. 213/1983 in this Court on January 31, 1983. The State Government of Rajasthan and the Labour Commissioner, were joined as respondents No. 1 and 2. The Company was joined as respondent No. 3. The RTUK produced retrenchment notice/order published in newspaper called "Adhikar" dated January 20, 1983 and January 22, 1983. As stated therein, the retrenchment had become effective from January 17, 1983 and January 19, 1983. The RTUK prayed that the notice of retrenchment be declared illegal and void. It further prayed that the workmen

be declared to be continuously in service and respondent No. 3 be directed to pay full back wages, allowances and other benefits as if services of workmen were never terminated. The RTUK also prayed that the company be directed to comply with the provisions of Section 25N of the Act. Section 25N of the Act lays down certain conditions precedent before retrenching any workman. The RTUK also prayed for a direction to prosecute the company for breach of certain mandatory provisions of the Act. The RTUK also prayed that the company be directed to make payment of arrears of accumulated wages and other benefits to which the workmen would have been entitled had their services been not terminated.

8. As stated above, Writ Petition No. 213/1983 was filed by RTUK on January 31, 1983. The Labour Commissioner issued show cause notice to the President of the Company (Shri Sita Sing-hania) (sic) and to the Executive Director of the Company (Shri S.P. Agrawal) on February 19, 1983. In the show cause notice it was stated that after examination of the record and after preliminary enquiry, the Government had come to the conclusion that the company had retrenched its workmen by notice dated January 15/17, 1983 on mass scale without valid grounds and in violation of the provisions of Section 25N(1) (c) of the Act and also without complying with the provisions of Rules 76, 76-A and 77 of the rules 1958. Therefore, they were called upon to show cause as to why they should not be prosecuted for the retrenchment of workmen and for the offences punishable u/s 250 read with Section 34 of the Act. They were required to submit reply within ten days of the receipt of the notice. Instead of filing reply to the notice, the company filed Writ Petition No. 409/1983 on February 28, 1983. The Company prayed that the provisions of Section 25M, 25N and 25O of the Act be declared unconstitutional and void. It prayed for a direction to the respondents not to enforce the aforesaid provisions. It also prayed to quash and set aside show cause notice dated February 19, 1983 and for a direction to concerned respondents to withdraw or cancel the show cause notice.

9. On March 7, 1983 the High Court (S.N. Bhargava, J as he then was) admitted the Petition and granted interim relief prohibiting the Government from proceeding further in the matter. On the other hand on March 7, 1983 itself, in the petition filed by RTUK the Court granted interim relief and restrained the Company from making further retrenchment of the workmen. The Writ Petition was filed by the RTUK mainly on the ground that the company has contravened the provisions of Section 25N of the Act inasmuch as it had effected retrenchment of workmen on mass scale without previous notice to the Government and without complying with other pre-conditions as laid down in Section 25N of the Act. The learned Single Judge referred the matter to Full Bench. Ultimately both the matters were ordered to be placed before Full Bench.

Reference to Industrial Tribunal

10. When the aforesaid petitions were pending, the State Government of Rajasthan in exercise of its powers u/s 10H of the Act, ordered to make

reference of the dispute to Industrial Tribunal. While passing the order of reference the Government took into consideration several events starting from lay off and mass retrenchment of 2367 workmen contrary to past practice and settlement dated September 24, 1982, pendency of writ petitions in the High Court filed by the RTUK and by the Company, the effecting of retrenchment of the workmen without complying with the provisions of Section 25N of the Act, issuance of show cause notice to the Company by the Government and several other factors. The Government recorded its satisfaction that an industrial dispute existed between the management and the workman about the retrenchment as well as about the work load and assessment of the strength of workers required in the Plants. The Government recorded its satisfaction that the dispute was not likely to be settled by mutual agreement. It further recorded that if the dispute is continued, industrial peace will be disturbed and prolonged hardships will be caused to a large section of the community. Therefore, to defuse the discontentment and tension, Preferred the following matters for adjudication to the Industrial Tribunal, Jaipur.

1. Whether the lay off in 4 Divisions of J.K. Synthetics Ltd., Kota (viz. J.K. Synthetics , J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) from January 10, 1983 to February 17, 1983 was legal and justified and if not, to what relief the workers are entitled?
2. Whether the retrenchment in 4 Divisions of J.K. Synthetics (viz J.K. Synthetics, J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) was justified and if not, to what relief the workers are entitled?
3. Whether in case the provisions of Section 25N of the Industrial Disputes Act, 1947 are held to be unconstitutional by the Hon"ble High Court in the Writ Petitions (213/1983 and 409/1983) the retrenchment was in accordance with other provisions of the said Act, and to what relief workers are entitled?
4. Whether non-resumption of duty by unretrenched workmen engaged in the four Divisions of J.K.Synthetics Ltd.. Kota (viz., J.K.Synthetics. J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) was justified and whether the workmen are entitled to any relief for this period from February 17, 1983 till they resumed duty".

#### The Progress of Writ Petitions

11. As indicated hereinabove, both the writ petitions were ordered to be placed before Full Bench. They were heard and decided on October 19, 1983. The Full bench (G.M. Lodha J as he then was, Dr. K.S.Sidhu J. and G.K. Sharma, J) by majority (Dr. K.S. Sidhu, J. differing) held that the provisions of Section 25N (1) (c) read with Sub-section (2) of Section 25N and Section 25Q of the Act, were unconstitutional. The Full Bench further prohibited the State Government from enforcing the aforesaid provisions against the company. The Writ Petition filed by RTUK (213.83) was ordered to be dismissed.

12. The RTUK filed Civil Appeal No. 4/1984 before the Supreme Court against the judgment and order passed by the Full Bench. The Supreme Court granted special leave and admitted the Appeal as per order dated January 2, 1984. The Supreme Court in the order inter alia observed that the company had already retrenched more than two thousand workmen without complying with the requirements of Section 25N (1) (c) of the Act. The Supreme Court directed that pending disposal of the Appeal, the Company should pay one third of the total wages (inclusive of DA etc.) to the workmen affected by the retrenchment as and by way of subsistence allowance subject to future adjustment, commencing from the date of retrenchment till the final disposal of Appeal. The Supreme Court also directed to make payment of the arrears on the aforesaid basis to the concerned retrenched workmen within two months from the date of order.

Further progress of the reference before Tribunal.

13. During the pendency of the Civil Appeal before the Supreme Court, proceeding before the Industrial Tribunal, Jaipur in IT No. 81 /1983 proceeded further. On March 22, 1985 the company and its workmen had entered into a settlement. This was produced before the Tribunal. The Tribunal did not accept the settlement. It directed to take voting of all the workmen to ascertain their wishes as regards the acceptance or rejection of the settlement. Totally 4844 workmen were eligible to vote. Out of them 3946 workmen exercised their vote, 102 votes were rejected as invalid. Thus total valid votes were 3844. Majority of the workmen i.e. 1994 voted against the settlement. They did not accept the settlement. On the other hand, 1850 workmen voted in favour of the settlement. They were agreeable to accept the settlement.

14. The Tribunal pronounced its finding on each issue on May 7, 1985. Thereafter it finally passed the award on May 14, 1985. The Tribunal held that the lay-off was legal and valid. It declared the strike as unlawful and unjustified. As regards 1201 workmen, it held that the retrenchment was in contravention of the provisions of the Act. They were ordered to be reinstated in service with 40% to 45% of back wages. As regards 1166 workmen, the Tribunal held that they belonged to Textile Section of the Company which was closed down. Therefore, in relation to them, there was no industrial dispute. Hence no question of giving any direction in relation to them arose. The Tribunal opined that majority of the workmen had voted against the settlement even so it could look into the settlement for the purposes of granting relief. The Tribunal held that the findings given by it on different issues were carried to the logical end, large section of the workmen, numbering 1166, would be deprived of any relief. Therefore, it moulded the relief and directed to award cash compensation to 1166 workmen which vary from person to person. It was mainly in terms of the settlement dated March 22, 1985. The detailed directions given by the Tribunal are contained in para 133 of the award.

As regards the period of strike, the Tribunal directed that the period commencing from February 17, 1983 upto August 1983, when the work was resumed, ex-

gratia amount equivalent to 50% of the wages was ordered to be paid considering as if they had worked and they had not been on strike. The Tribunal issued certain general directions which are contained in paras 141 to 146 of the award.

In substance, the Tribunal passed the award in terms of the settlement. However, the Tribunal made it clear that it was passing the award in exercise of its own power and not as per the terms of the settlement inasmuch as majority of the workmen were against the settlement and the Tribunal had refused to pass the award in terms of the settlement. On the aforesaid lines, the final award was passed by the Tribunal on May 14, 1985.

Civil Appeal No. 4165/1985 to Supreme Court by Workmen

15. The Workmen felt aggrieved by the award passed by the Tribunal. Therefore, RTUK challenged the legality and validity of the same before the Supreme Court. The Supreme Court granted SLP and admitted Civil Appeal No. 4165/1985. During the pendency of the Civil Appeal No. 4/1984 (Which was filed by the RTUK against the Full Bench decisions of this Court) and Civil Appeal No. 4165/1985, an application was made for modification and/or for setting aside of the earlier order dated January 2, 1984 passed by the Supreme Court. By this order the Supreme Court had directed the Company to make payment of one-third of the wages to the workmen affected by the retrenchment. The Supreme Court rejected the application as per order dated September 11, 1985 with certain clarification.

Final decision by Supreme Court in CA Nos. 4/84 and 4165/85

16. Both the Civil Appeals No. 4/1984 and 4165/1985 were decided by the Supreme Court by a common judgment and order dated March 17, 1993. In view of the decision of the Apex Court in the case of Workmen of Meenakshi Mills Ltd. and Others Vs. Meenakshi Mills Ltd. and Another, the Supreme Court held that the judgment of the Full Bench of Rajasthan High Court declaring the provisions of Section 25N of the Act as unconstitutional, was required to be upset. Thus, the Supreme Court allowed the Civil Appeal No. 4/1984 filed by the RTUK. The Supreme Court directed to reject the Writ Petition No. 409/1983 filed by the Company. The Supreme Court further directed to remand the Writ Petition No. 213/1983 filed by the RTUK to the High Court. As regards Civil Appeal No. 4165/1985 filed by the RTUK against the award passed by the Tribunal, the Supreme Court directed that it may also be remanded to the High Court and ordered to treat the same as Petition under Articles 226/227 of the constitution and register the same afresh. Thus, in substance both the matters i.e. Writ Petition No. 213/1983 filed by the RTUK and Civil Appeal No. 4165/1985 filed by the RTUK against the award passed by the Tribunal, stood remanded to the High Court. Civil Appeal No. 4165/1985 was registered as Writ Petition No. 5106/1993 by the High Court. The Supreme Court in the order inter alia observed that the claim of workmen based on the provisions of Section 25N of the Act, was not

examined and pronounced upon by the High Court. Therefore, it would need remand to decide the Writ Petition No. 213/1983 on its own merits. Before the Supreme Court on behalf of the company, it was conceded that in respect of 1201 workmen the direction given by the Tribunal was of re-employment. However it was to be construed as reinstatement in service with back wages as ordered by the Tribunal. The Supreme Court thought it proper to collate both the litigations i.e. Writ Petition No. 213/1983 and Civil Appeal No. 4165/1985 arising out of the award passed by the Tribunal. Hence the Supreme Court directed remand of both the matters to the High Court. This is how both the matters stood remanded to the High Court as per the order passed by the Supreme Court on March 17, 1993. Civil Appeal No. 4165/1985 was registered by the High Court as Writ Petition No. 5106/1993.

SB Civil Writ Petition No. 6248/1993 filed by the Company

17. On August 25, 1993, the Company filed Writ Petition No. 6248/1993 and challenged legality of the award passed by the Tribunal on May 14, 1985. The company contended that the order of the Tribunal dated April 5, 1985 directing to take secret ballots as regards settlement dated March 22, 1985, be declared illegal and void. The Company also prayed that the order dated May 14, 1985 passed by the Tribunal holding that it could look into the settlement for the purposes of moulding the relief and if necessary it would examine the settlement when finding on various issues were given, be declared illegal and void. The Company further prayed that the award of Tribunal dated May 14, 1985 be set aside and the same may be passed or strictly modified in terms of the settlement dated March 22, 1985, entered into between the parties in substance, the petition is filed by the company contending that the Tribunal could pass award only in terms of the settlement. Even though the award may be substantially in terms of the settlement since it was not passed in terms of settlement the company has filed the Petition challenging the legality and validity of the award and praying for the reliefs as stated above.

Zigzag movement of the Petitions before High Court after remand from the Supreme Court

18. After remand of the aforesaid matters, the Registrar obtained orders from the learned Chief Justice for placing the matters before the appropriate Court. Writ Petition No. 409/1983 filed by the Company, stood rejected as per the direction of the Supreme Court. Writ Petitions No. 213/1983 and 5106/1993 (No. given by the High Court to CA No. 4165/1985 of the Supreme Court), were required to be, heard by the High Court as per order of the Supreme Court. The learned chief Justice ordered the matters to be placed before Division Bench. However, it was contended on behalf of the Company that the matters were required to be placed before the Single Bench because after remand of the matters, no question regarding determination of constitutional validity of any provision of the statute, remained pending. To similar effect, application was also filed by another Union. This objection was raised before the Division Bench but

the Division Bench did not pass, order. Request was made to the learned Chief Justice who as per order dated September 15, 1993 directed the matter to be placed before Single Bench. Again by another order, the learned Chief Justice passed a specific order directing the matter to be placed before V.K. Singhal, J. This is how both the matters were placed before learned Single Judge (V.K. Singhal, J) of this Court.

19. The RTUK filed DB Special Appeal (Writ) No. 605/1993 and challenged the legality and validity of the order passed by the learned Chief Justice directing to place the matters before Single Bench. It was contended that once the matters were ordered to be placed before Division Bench, unless the Division bench releases the matters and passes any judicial order, it could not have been withdrawn from it and ordered to be placed before Single Bench. The Division Bench of this Court heard the Special Appeal and rejected the same as being not maintainable by order dated December 1, 1993. Thereafter the matters were heard and decided by learned Single Judge (V.K. Singhal, J.) on March 25, 1994.

20. By common judgment and order dated March 25, 1994 the learned Single Judge decided the Writ Petitions Nos. 213/1983 and 5106/1993. The learned Single Judge over-ruled the objections raised on behalf of the Company as regards the maintainability of Writ Petitions and as regards the locus standi of Union to file the writ petitions. The learned Single Judge upheld the findings of Tribunal with regard to the lay-off and as regards strike period. The learned Single Judge rejected the prayer made by the RTUK for prosecution of the Company. The learned Single Judge further directed that 1201 workmen, who were ordered to be reinstated in service with 40% to 45% of back wages, were entitled to full back wages. This direction was given in view of the decision of the Apex Court in the case of Meenakshi Mills Ltd. (supra). The learned Single Judge up-held the finding of the Tribunal as regards the closure of Nylon Plant so-called Textile section of the Company. Therefore, the learned Single Judge held that the discussion with regard to the applicability of Section 25FFA of the Act, was only academic. The learned Single Judge directed that no question of giving any relief for the alleged non-compliance of Section 9A of the Act arose. Thus, both the Writ Petitions (213/1983 and 5106/1993) were decided by the learned Single Judge as per the judgment and order elated March 25, 1994.

Particulars regarding different Special Appeals.

21. (i) Appeal No. 335/1994 is filed by the Company against the judgment and order passed by the learned Single Judge in Writ Petition No. 213/1983 filed by the RTUK. The Company had felt aggrieved by the order of learned Single Judge as regards direction to pay full back wages to 1201 workmen instead of 40% to 45% (the learned Single Judge has considered that the Tribunal has awarded 50% of back wages). However, the prayer made by the Company is that the entire judgment and order passed by the learned Single Judge be quashed and set aside.

(ii) Appeal No. 338/1994 is filed by the Company against the judgment and order passed in Writ Petition No. 5106/1993 filed by the RTUK. It may be noted that RTUK had filed Civil Appeal No. 4165/1985 before the Supreme Court challenging the award dated May 14, 1985 passed by the Industrial Tribunal, Jaipur. The Supreme Court by order dated March 17, 1993 remanded the matter to the High-Court and directed to treat the same as Writ Petition under Articles 226 and 227 of the Constitution. The said proceeding was registered as Writ Petition No. 5106/1993. The Judgment and order passed by the learned Single Judge is common but the Company has filed two separate appeals. The prayer made in the Appeal is that the judgment and order passed by the learned Single Judge in Writ Petition No. 5106/1993 be reversed and set aside.

(iii) & (iv) Appeals No. 337/1994 and 179/1995 have been filed by the RTUK against the common judgment and order dated March 25, 1994 passed by the learned Single Judge in Writ Petitions No. 213/1983 and 5106/1993. In both the appeals the prayer made is substantially the same. However, to avoid technical objections, two appeals appear to have been filed. The prayer made in these appeals is that the entire work force of 2367 workmen be ordered to be reinstated by the company with full back wages and continuity of service. It also prayed that the lay off declared by the Company from January 10, 1983 to February 17, 1983 be declared illegal and the company be directed to make payment of full back wages to the affected workmen from the period of so-called lay-off. It is also prayed that the strike of the un- retrenched workmen be declared legal and justified and the Company be directed to make full payment of the period of strike. It is further prayed that the State Government and the Labour Commissioner be directed to prosecute the company and its officers.

(v) Appeal No. 339/1994 is filed by the J.K. Synthetics Mazdoor Union (affiliated to CITU). The Appeal is directed against the judgment and order passed in Writ Petition Nos. 213/1983 and 5106/1993. It is prayed that the judgment and order passed by the learned Single Judge be quashed and set aside insofar as it affirmed the finding with regard to closure of so-called Textile section and held that the termination of services of 1166 workmen of so-called Textile Section was on account of closure. It is also prayed that the finding with regard to strike being unjustified and illegal be also reversed and set aside.

(vi) Writ Petition No. 6248/1993 filed by the Company.

Particulars of this Petition have been given hereinabove in para 17.

Writ Petition No. 6248/1993

22. This petition has been filed by the company on August 25, 1993, It was a Single Bench matter. However, on May 18, 1995 joint request was made on behalf of the Company as well as on behalf of the Union to tag on this matter with special Appeals No. 335/1994, 338/1994, 337/1994, 179/1995 and 339/1994 and to place the same before the Division Bench. The request was accepted and order was passed accordingly on administrative side on May 18,

1995. On the same day it was placed before the Division Bench. That is how the matter is placed before the Divisional Bench and it was heard together with the aforesaid appeals.

In this Petition, Company has challenged the legality and validity of the award dated May 14, 1985 passed by the Tribunal in IT No. 81/1983. Objection has been raised on behalf of the RTUK that the Company is estopped from challenging the legality and validity of the award. It is submitted that the stand of the company before the Supreme Court in Civil Appeal No. 4165/1985 was that it had accepted the award. Therefore, now it cannot be permitted to challenge the legality and validity of the award. It is further submitted that the Petition suffers from vice of delay, laches and acquiescence. The award passed on May 14, 1985 is being challenged by filing Petition on August 25, 1993 i.e. after an inordinate delay of more than eight years. It is further submitted that the Petition suffers from the vice of suppression of material facts, it was submitted before the Hon'ble Supreme Court in different affidavits filed on September 6, 1985 and again in February 1993 that the Company had accepted the award. This fact has been suppressed in this Petition. True and correct position has not been brought to the notice of the Court. Had this fact been brought to the notice of the Court and complete picture been placed, in all probabilities the court would not have admitted the Petition at all. On the aforesaid grounds it is submitted that the Petition is required to be rejected.

23. In view of the aforesaid submission, specific question was put to the learned counsel appearing for the Company as regards the statement made before the Supreme Court in affidavit dated September 6, 1985 sworn by Shri Ashok Singhan, Vice President of the Company and again in the affidavit of Shri Brijesh Bhargava, Manager (Legal) which was filed some time in February 1993. The learned counsel appearing for the company fairly conceded that the Company did file the aforesaid affidavits. He further conceded that before the Hon'ble Supreme Court in the aforesaid affidavits statements were made on behalf of the Company that it had accepted the award. However it is submitted that there was no intention on the part of the company to withhold or keep back any material from the Court. Therefore, it is submitted that the Petition may not be rejected on the ground of suppression of facts. It is further submitted that in facts of the case the delay in filing the petition should be treated as having been satisfactorily explained in para 17 of the memo of Writ Petition.

24. We have considered the rival submissions. In our opinion, there is no satisfactory explanation regarding delay in filing the Petition. The RTUK had challenged the legality and validity of the award before the Supreme Court by Filing C.A.No. 4165/1985. Therein the Company took the stand that it was accepting the award. It did not say that it had felt aggrieved by the award. If the company felt aggrieved by the award in any manner whatsoever, it could and it should have challenged the same before the Supreme Court itself. On the contrary, before the supreme Court its stand was that it was accepting the award

passed by the Tribunal. Despite this being the factual position in this Petition the Company has nowhere stated that it had accepted the award passed by the Tribunal. It may be noted that on account of the pendency of the proceedings before the Supreme Court, the Company was not in any way precluded from challenging the legality and validity of the award. It could have taken up this stand before the Supreme Court also. Therefore, the ground advanced in para 17 of the memo of Writ Petition taking shelter of the pendency of the proceedings before the Supreme Court, cannot be said to be a satisfactory and sufficient explanation for delay in filing the Petition.. Moreover, there is no explanation whatsoever as to why the material facts have been suppressed. The Company had accepted the award and had acquiesced in it. This was its stand before the Supreme Court. These facts have not been stated in the Petition. On the contrary, they have been suppressed.

25. In the above view of the matter, the company cannot be permitted to file the Petition challenging the legality and validity of the award after an inordinate and unexplained delay of more than eight years. The Petition suffers from vice of suppression of material facts. The Company has not stated the details with regard to the statements made in its different affidavits before the Hon"ble Supreme Court. In these affidavits the stand of the Company was that it had accepted the award. In view of this position, the Petition is required to be rejected with costs. The costs will be quantified hereinafter.

Appeals arising out of judgment and order passed by the Single Bench in Writ Petitions No. 213/1983 and 5106/1993

26. This brings us to the Appeals filed by both the sides against the judgment and order passed by the learned Single Judge in SB Writ Petitions No. 213/1983 and 5106/1993 decided on March 25, 1994. First we take up the question with regard to "lay-off

Lay-off from January 10, 1983 to February 17, 1983

27. The Company declared lay-off on January 10, 1983 in all the four plants at Kota and lifted the same in phases commencing from February 6, 1983 to February 17, 1983. The case of the Company was that on account of 100% power cut imposed by the Rajasthan State Electricity Board (for short "RSEB") it was forced to declare lay-off. The evidence led by the company in this behalf has been accepted by the Tribunal. The workmen represented by different -Unions and particularly RTUK maintained that lay off was prelude to mass retrenchment. It was planned and motivated one. Therefore, it was malafide. This case of the workmen has not been accepted by the Tribunal. After discussing the definition of "lay-off" occurring in Section 2(kkk) of the Act, the Tribunal came to the conclusion that there was shortage of power and it was beyond the control of the employer to manage power supply. Therefore, the company was unable to provide employment to its employees. Thus, the Tribunal held that the action of the company to declare lay-off was legal and justified.

28. The learned Single Judge after considering the rival submissions, recorded his finding as regard lay-off, in para 59 of his judgment. He came to the conclusion that the two Russian Generating Sets had been operated beyond the prescribed standard stated in the Manual of the manufacturers. Therefore, they were not available for generating electricity. The learned Single Judge observed that there may be minor discrepancies in the appreciation of evidence by the Tribunal. However, in his view, the award as regards lay-off, was not required to be modified. The learned Single Judge, in para 59 of the judgment observed as follows:

"It may be coincidence or may be even a planned action that during the period of lay off, number of employees were retrenched, but the question of retrenchment being considered separately here it has only to be examined as to whether the lay off was justified or not or could be said to be malafide "

29. The approach adopted by the learned Single Judge, with utmost respect, is grossly erroneous. While considering the issue with regard to justifiability and legality of lay off, the action of the company as regards retrenchment of the workmen has got to be examined. Both the actions have been taken by the company almost simultaneously. Both are inextricably connected with each other. One question cannot be examined and understood in proper perspective without considering the other one in this case.

In this case Company has withheld certain facts which were in the knowledge of officers of the Company and the documentary evidence in that connection has also been withheld by the company. Hence the Tribunal as well as the learned Single Judge have failed to take into consideration the settled legal position of law laid down by the Supreme Court in the case of Gopal Krishnaji Ketkar Vs. Mahomed Haji Latif and Others, In that case, the question was with regard to the determination as to whether particular property belonged to Dargah or it belonged to the appellant. The lower courts had held that the land was not of the ownership of the appellant but it was the property of Dargah. In relation to the question as regards the income of Dargah, the appellant had admitted that there was record of the Dargah income and the account was kept separately. It was argued on behalf of the counsel for the appellant that it was not part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of the property. Repelling the contention, the Supreme Court observed that even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. "it is not, in our opinion, a sound practice for those desiring to rely upon a certain set of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof. This settled legal position has not been taken into consideration by the Tribunal as well as by the learned Single Judge. In the instant case, the

burden of proof regarding justification of lay off was on the Company. Therefore, it was incumbent upon it to produce before the Tribunal the best evidence and primary evidence with regard to the availability of alternative source of generating electricity. The company had led the evidence of Shri. P.P. Mathur, Senior Electrical Engineer of the company. The Tribunal has also considered the evidence of witnesses of the workmen. The Tribunal accepted the oral evidence of Shri P.P. Mathur, Senior Electrical Engineer, who had stated in his affidavit that two Russian Generating Sets had been operated beyond the prescribed capacity of five thousand hours and that they were not in working condition. They required overhauling when 100% power cut was imposed. The aforesaid finding has not been interfered with by the learned Single Judge. The Tribunal as well as the learned Single Judge failed to take into consideration the settled position of law as indicated hereinabove. Shri P.P. Mathur, Senior Electrical Engineer, examined by the Company, admitted in his cross-examination that a log-sheet for each of the Generating Sets, was kept. He further admitted that in the log-sheet, in the entry of December 24, 1982 there was an entry that the Set was stopped because of availability of power from the RSEB. Those documents have not been produced by the company. It was also admitted by him that as and when inspection of the Diesel Sets was undertaken, an entry to that effect was made in the report register by the Shift Supervisor Incharge. These registers also have not been produced. Moreover, the engine log-book in which entry is made as to how many parts are found damaged, has also not been produced. These are the documents wherein contemporaneous record about the working conditions of the respective machines and other details are maintained. It was not open to the company to withhold these documents. The Company ought to have produced this primary documentary evidence in order to show that it was not in position to generate electricity from the Russian Generating Sets and other small Generating Sets available, with the Company. Aforesaid circumstances of withholding of important documents, become more important in view of the admission of Shri A.N. Mathur, General Manager (Personnel), to the effect that earlier also there was 100% power cut imposed by the RSEB but 100% lay-off was not declared by the Company. In para 34 of the award the Tribunal has recorded this admission.

30. In para 33 of the award the Tribunal has recorded that decision to retrench or close, was taken in October/November 1982. After noting this finding the Tribunal observed that at that time it could not have envisaged that there will be 100% power cut in the month of January 1983. True, it may be that the Company could not have envisaged the precise date on which 100% power cut may be imposed by the RSEB. However, the fact remains that in the State of Rajasthan there was always short supply of electricity from RSEB. This is recorded by the Tribunal in para 20 of its award as follows:

Year % of average power cut No. of interruption?

1979 Severe power shortage suffered by the

State - % not indicated

39

1980 28% 18

1981 44% 42

1982 65% 145

In view of this erratic and uneven short supply of power, it would not be difficult for the Company to wait for the day of declaration of 100% power cut. In fact, it was on account of erratic power supply that the Company had made alternative arrangements for generating electricity of its own. In this background, once the decision to retrench the workmen was taken in October/November 1982, all that was required by the Company was to plan out the steps for declaring lay-off and for retrenching the workmen.

One cannot lose sight of the fact that the company was acting under legal advice. It was the case of Company before the Government that it had not complied with the provisions of Section 25N of the Act because it believed under legal advice that the provision was unconstitutional. Thus, reasonable and inevitable inference has got to be drawn that when the declaration of lay-off was made and immediately thereafter retrenchment on mass scale was resorted to the Company had considered all the ramifications of its action and had made plans, how to handle the situation.

31. In this connection, evidence of Shri F.C. Rastogi, Executive Director of the Company, be noted. In para 57 of the award, the Tribunal observed that Shri Rastogi admitted, that notices of retrenchment were prepared between January 10 to 15, 1983 and no information was sent even to the Labour Department, before retrenchment. Thus, simultaneously with the declaration of lay off, the Company started to prepare retrenchment notices and they were sent to each workman by Registered A/P post from Delhi. The same were also served upon the workmen by giving public advertisements in daily newspaper called "Adhikar" dated January 20 and 22, 1983. The retrenchment was effected ever without informing the Labour Department of the Government as required by the provisions of Section 25F (c) of the Act. Preparation of thousands of retrenchment notices, dispatching of the same and publication in newspaper reports even without waiting for the compliance of statutory requirement to inform the Government, would lead to only one irresistible inference that declaration of lay- off and the simultaneous action of retrenchment was a meticulously planned operation of the Company.

32. As per usual practice and as per the definition of lay-off contained in Section 2(kkk) of the Act when a company declares lay-off, workmen would be required to attend the factory and mark their presence. If the employer fails to offer work to the workmen then only they would be entitled to claim wages. Ordinarily it was so stated in the notice of the lay-off that the workmen should attend the

factory and mark their presence even during the period of lay-off. However, at this time when lay off was declared in the notices it was stated that the workmen were not required to attend the factory. This was unusual. In past when the layoff was declared no such instructions were given. It has remained unexplained as to why such instructions were given. Therefore, inevitable conclusion is that the declaration of layoff was a meticulously planned affair.

33. On behalf of the workmen Shri Nathu was examined. In his cross-examination, he has stated that he had seen both the Russian Generating Sets in running condition when there was strike. He did say that he did not go inside the factory. Similarly, witnesses of the workmen S/Shri Radheyshym, Tirth Ram, Surendra Prasad, Mohd. Ali and Laxmi Prasad, stated in their affidavits that there were Generating Sets with the Company which met 70% requirement of electricity. They further, stated that it was only a pretext that on that day two Russian Generating Sets had gone out of order. These witnesses have not been cross-examined on this point. This part of their evidence has remained uncontroverted. Still, however, in para 33 of the award, the Tribunal discarded their evidence by making following observation:

"Though they have not been cross-examined on this point but they do not state that the two generating sets were seen by them in working order on January 9/10, 1983 when lay off was declared"

It is not understood how such obviously untenable approach could be adopted. If the statements made by the witnesses were doubted, it was for the counsel of the company to cross-examine the witnesses. Their statements in the affidavit have remained uncontroverted. Therefore, there was no basis whatsoever on which their deposition on this point could be discarded. This is an error apparent on the face of record committed by the Tribunal. Unfortunately the learned Single Judge has also failed to notice this, which has resulted into miscarriage of justice. The learned Single Judge adopted grossly erroneous approach when he held that question of mass retrenchment of workmen was not relevant, while considering the question of lay-off. Both the Tribunal as well as the learned Single Judge have failed to take into consideration the law laid down by the Hon'ble Supreme Court in the case of Gopal Krishnaji Ketkar (supra). With utmost respect, evidence on the record has been misread by the Tribunal. This error, apparent on the face of record, has resulted into miscarriage of justice.

34. The cumulative effect of all the facts and circumstances taking together and applying the correct principles of law laid down by the Supreme Court, the finding arrived at by the Tribunal and not disturbed by the learned Single Judge as regards declaration of lay off by the Company and justifiability thereof, cannot be sustained. The said finding is hereby reversed and set aside. We are of the opinion that the lay off declared by the Company was planned and motivated. The company failed to prove that it could not generate electricity for its requirement and that it was impossible to meet with its requirement from the available Russian Generating Sets and other small Generating Sets. The

Company has failed to prove that there was justification for 100% lay-off. The conduct of the Company immediately prior to the declaration of lay-off and immediately thereafter, leads to an -irresistible inference that the lay-off declared was a prelude to mass retrenchment. In the notices of layoff, unusually it was mentioned that the workmen were not required to attend the factory. The Company got prepared the retrenchment notices from January 10, 1983 simultaneously with the declaration of lay-off on the same day. Retrenchment was effected even without informing the Government as required u/s 25F(c) of the Act. The Company was acting under legal aid-1 vice. This is so stated by the Company before the Government sometime in January/February 1983. The lay off was declared by the Company in order to facilitate itself the mass retrenchment of about 2400 workmen. For the aforesaid reasons and for the discussion made hereinabove, we are of the opinion that the workmen are entitled to claim full wages for the entire period of lay off.

Strike from February 17, 1983 to August 5, 1983.

35. The layoff was lifted by the Company on February 17, 1983. Even thereafter, unretrenched workmen did not report for duty. One of the points of dispute referred to the Tribunal by the Government in its order of reference dated August 25, 1983, reads as follows:

"Whether non-resumption of duty by unretrenched workmen engaged in the four Divisions of J.K. Synthetics Ltd., Kota (viz. J.K. Synthetics, J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) was justified and whether the workmen are entitled to any relief for this period from January 17, 1983 till they resumed duty".

It may be noted that before passing the order of reference on August 25, 1983, the Government had passed an order u/s 10-K of the Act which empowers the Government, if it found necessary or expedient for securing the public safety or convenience or maintenance of public order or supplies and services essential to the life of the community or for maintaining employment or maintaining industrial peace, to pass a general or special order and to make provisions-

(a) for requiring employers, workmen or both to observe for such period as may be specified in the order, such/terms and conditions of employment as may be determined in accordance with the order and

(b) for prohibiting, subject to the provisions of the order, strike or lock-outs generally or a strike or lock-out in connection with any industrial dispute.

Till the Government passed the order (sometime in August 1983) exercising the powers u/s 10K of the Act, non-resumption of duty of by the unretrenched workmen appears to have continued. The Tribunal, after considering the evidence on record and case law cited before it, came to the conclusion that non-resumption of duty by the unretrenched workmen (except staff members if any) in the three Divisions of Company, viz. J.K. Synthetics, J.K. Staple &Tows and

J.K. Tyre Cord, was unjustified. The Tribunal further held that the members of staff association and the workmen of Acrylic Plant, were not under illegal strike. However, even with regard to the workmen of J.K. Acrylic Plant, the Tribunal held that non-resumption of duty by them for the entire period was not justified because according to the Tribunal strike was not legal. The finding arrived at by the Tribunal has been confirmed by the learned Single Judge. As per the award of the Tribunal, the Company was required to make ex-gratia payment of 50% of wages to the workmen. The Tribunal also directed that the payment of Rs. 600/- if made as per special order dated August 28, 1983 passed by the State Government the same will be adjusted in the aforesaid ex-gratia payment. The learned Single Judge held that the strike was illegal and unjustified. The learned Single Judge did not think it proper to interfere with the award passed by the Tribunal.

35-A. It has been strenuously argued on behalf of the RTUK and other Unions that after mass retrenchment of about 45% of the total work force of the Company, there was bound to be reaction on the part of workmen. All of a sudden without there being any fault on their part, about 2400 persons were reduced to the position of beggars. This was done ignoring all the provisions of law. This was done in a meticulously laid down plan after obtaining legal advice. The workmen came to know about the retrenchment through public notices advertised in newspaper "Adhikar" dated January 20, 1983 and January 22, 1983 respectively. Different Unions of workmen requested the Management to withdraw the retrenchment and negotiate the issues with them. However, the Management adopted rigid attitude and it did not budge even slightly. It was further submitted that the instances of stray violence and filing of FIR wherein no name of workmen is stated, cannot be directly attributed to the workmen. Pendency of adjudication of industrial disputes, in facts of the case, would not make the strike illegal and unjustified.

36. We see much force in the arguments raised on behalf of the workmen. However, at the same time we feel constrained on account of the scope of the proceedings before us. We are dealing with Special Appeals. The question of legality of the strike and its justifiability is mainly based on the appreciation of evidence. Had we been sitting as a court of first appeal or had we been considering the case of strike afresh in original proceedings, very probably we would not have held that the strike was unlawful or unjustified. In facts of the case, when the company in blatant violation of law, retrenched 2367 workmen and passed economic death sentence on them and their family members sympathetic and liberal approach could and should have been adopted in favour of the workmen. In such a situation, even if there be some over-reaction on the part of workmen that should not have been considered sufficient to hold the strike illegal and unjustified. However, in special Appeals, on account of the limited scope of the proceedings, when two views are possible, we would not like to interfere with the decision arrived at by the Tribunal and up-held by the learned Single Judge. At the same time, we would like to make it clear that non-

interference with the decisions of the Tribunal and that of the learned Single Judge regarding strike should not be taken as approval of the same. In view of the limited scope of proceedings, we do not disturb the finding arrived at by the Tribunals, we do not disturb the finding arrived at by the Tribunal and up-held by the learned Single Judge as regards the period of non-resumption on duty by the workmen.

Retrenchment of 2367 workmen: Splitting up of the dispute in two divisions - Was it permissible

37. It may be recapitulated that the State Government in exercise of its suo motu powers u/s 10H of the Act (as applicable to the State of Rajasthan) passed an order of reference dated August 28, 1983. Section 10H of the Act reads as follows:

"State Government may refer industrial dispute to Industrial Tribunal for adjudication:

(1) Notwithstanding anything contained in this Chapter the State Government may, at any time, refer an industrial dispute for adjudication by the Industrial Tribunal if on a report made by the conciliation Officer or otherwise it is satisfied that -

(a) by reason of the continuance of the dispute -

(a) a serious outbreak of disorder or a break of the public peace is likely to occur or

(b) serious or prolonged hardship to a large section of the community is likely to be caused; or

(c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or

(B) the dispute is not likely to be settled by other means or

(C) it is necessary in the public interest to do so.

(2) When the State Government makes a reference to the Industrial Tribunal for adjudication of any industrial dispute, any submission or any award of an arbitrator with regard to that Industrial dispute shall stand as cancelled."

As reflected in the order of reference, the State Government was satisfied about the condition prevailing in the industry and in the region. The State Government referred to the circumstances starting from lay-off to the threatened hunger strike by some workmen. It referred to the settlement dated September 24, 1982 and mass retrenchment of workmen. It referred to the Writ Petitions filed by the RTUK and also by the Company (213/1983 and 409/1983 respectively). Several other facts and circumstances have been referred in the order of reference itself, thereafter it recorded its satisfaction and referred the four point of disputes.

Points No. 1 & 4 : lay-off and non-resumption of work by workmen (in other words, strike) even after lay-off was lifted. Points No 2 and 3 of the disputes referred to, read as follows:

"2. Whether the retrenchment in four Divisions of J.K. Synthetics (viz. J!K. Synthetics, J.K. Acrylic, J. K. Tyre Cord, J.K. Staple & Tows Kota) was justified and if not to what relief the workers are entitled.

3. Whether in case the provisions of Section 23N of the Industrial Dispute Act, 1947 are held to be un-constitutional by the Hon"bie High Court in the Writ Petitions (No. 213/1983 and 409/1983) the retrenchment was in accordance with other provisions of the said Act, and to what relief workers are entitled."

38. From the order of reference it is evident that there was no dispute referred to the Tribunal with regard to the closure of any of the Divisions of the Company. However, the Tribunal raised following eight issues on December 12, 1983. on the basis of the pleadings of the parties

"1. Whether the layoff in four Divisions of J.K.Synthetics, Kota (namely J.K. Synthetics, J.K. Acrylics, J.K. Staple & Tows and J.K. Tyre Cord, Kota) from January 10 to February 17, 1983 was legal and justified.

2. Whether the retrenchment in aforesaid four Divisions was justified.

3. The provisions of Section 25N of the Industrial Disputes Act, 1947 having been held to be unconstitutional by Hon"bie High Court of Rajasthan, whether the retrenchment in the aforesaid four Divisions of J.K. Synthetics is still in accordance with the other provisions of the Industrial Disputes Act, 1947.

4. Whether the non-resumption of duty by un-retrenched workmen engaged in the aforesaid four Divisions from February 17, 1983 was justified.

5. Whether for the reasons contained in para 25 and its various sub-paras of statement of demands of J.K. Synthetics Ltd., the reference made to this Tribunal is mala fide, misconceived and untenable.

6. Whether Item Nos. 1, 2 and 3 in terms of reference are not industrial disputes.

7. Whether there has been in fact any discon tinuance /closure of undertakings/ depart ments/processes/operations/inter-connected processes and activities in Nylon Division before retrenchment.

Whether the above, even if proved, amounts to closure as known in Industrial Law.

8. To what relief the parties are entitled.

39. On behalf of the workmen, objection was raised that the question of retrenchment of 2367 workmen could not be split up by the Tribunal. It was contended that the Tribunal was required to decide the dispute regarding retrenchment of all the workmen in all the four Divisions. The Government had

not referred the dispute as regards closure of any of the Plants of the Company. Therefore, it was not open to the Tribunal to raise the issue with regard to closure of a Plant and decide the same. This submission was negated by the Tribunal. After elaborate discussion on this point, the Tribunal in para 89 of the award recorded its conclusion as follows:

"It can, therefore, be said that if a case is pleaded on behalf of the employer that its action is closure and as such not an industrial dispute, then notwithstanding the fact that the dispute of closure has not been referred by the Government to the Tribunal for adjudication, the Tribunal has to decide the same as a preliminary issue as it relates to the jurisdiction of the Tribunal which can only adjudicate Industrial dispute and the law is settled that if a closure in fact has taken place then such a dispute is not an industrial dispute and is beyond the purview of the Industrial Tribunal apart from the question of compensation u/s 25FFF of the Industrial Disputes Act, 1947".

Thereafter the Tribunal examined the pleadings of the company and in para 97 of the award observed that from the pleadings of the parties it was clear that on behalf of the Company the jurisdiction of the Tribunal was challenged on the ground that so far as "Nylon Plant" (Textile section) is concerned there was no retrenchment of workmen. It was a case of closure of one part of an undertaking. Therefore, there was no industrial dispute which could be adjudicated upon by the Tribunal. Hence the Tribunal concluded that whether the Nylon Plant Division amounted to closure, as alleged by the Company, had to be examined as preliminary issue. Thus, the basis of assumption of jurisdiction to decide the issue as regards closure of the Nylon Plant (labelled as Textile section by the Tribunal) is the averment made in the pleadings of the parties. The Tribunal further held that this objection was raised at the far end of the arguments on behalf of the workmen. For these reasons the Tribunal negated the contention raised by the workmen.

40. The aforesaid finding has not been disturbed by the learned Single Judge. In para 83 of the judgment, the Learned Single Judge observed that after hearing the arguments he was of the view that since this point goes to the very root of jurisdiction of the Tribunal, the Tribunal was competent to frame such an issue in which its jurisdiction was required to be adjudicated upon.

41. With utmost respect to the Tribunal and to the learned Single Judge, the view taken by them is not sustainable in law. It is axiomatic to say that an Industrial Tribunal is a creature of statute. Therefore, its jurisdiction is circumscribed by the Act. An Industrial Tribunal is not a court of general or residuary jurisdiction. It is a Tribunal with specific jurisdiction enumerated by the terms of the orders of reference. A legally constituted Tribunal under the appropriate provisions of the Act can decide only the points of disputes referred to it by the appropriate Government. Section 10(4) of the Act circumscribes the jurisdiction of the Tribunal as far as the subject matter of the dispute referred to it is concerned. Section 10(4) of the Act reads as follows:

"10. Reference of disputes to Boards, Courts or Tribunals:

(4) Where in an order referring an Industrial dispute to a Labour Court, Tribunal or National Tribunal under this section or in a subsequent order, the appropriate Government has specified the points of dispute for adjudication, the Labour Court or the Tribunal or the National Tribunal, as the case may be, shall confine its adjudication to those points and matters incidental thereto".

The aforesaid provision permits the Tribunal to adjudicate the industrial dispute referred to it and matters incidental thereto. The Tribunal cannot go beyond the terms of reference. It could at the most decide some matter which may be incidental to the point referred to it.

42. The source of power of the Tribunal to adjudicate upon any dispute is the provision of the Act and the order of reference made to it by appropriate Government. The pleadings of the parties or consent of the parties cannot confer jurisdiction on the Tribunal. The pleadings of the parties may be looked into only to clarify the ambiguity, if there be any, in the order of reference. However, this does not mean that the parties by making certain averments in the pleadings, can confer jurisdiction on the Tribunal which it otherwise does not possess. The Tribunal may look to the pleadings of the parties to find out the exact nature of the dispute. But it cannot go a step further and change the foundation of the dispute made in the order of reference. The parties could not contend so before the Tribunal. Even if they contend so, it would not confer jurisdiction upon the Tribunal to change the very basis of the reference and decide altogether different point which has never been referred to it.

43. In the instant case, it is important to note that the Tribunal had not found that there was any ambiguity in the order of reference. Such is not the finding given by the learned single Judge. The order of reference made by the Government is very clear and unambiguous. It has referred to the background of the dispute. It has recorded its satisfaction about the existence of the dispute. It has referred to the earlier correspondence and the Writ Petition pending in the High Court. Reading the order of reference as a whole, it is evident that it leaves no room for ambiguity.

44. It may be noted that in retrenchment notices dated January 15, 1983 and January 17, 1983, nowhere the company stated that the termination of services of the workmen of Nylon Plant was on account of its closure. Notice dated January 15, 1983 relates to the termination of services of the workmen of the Nylon Plant of the Company. The reason assigned for termination of services of the workmen of this Plant reads as follows:

"All post draw twisting, medium speed and speed spinning processes for the production of Nylon and Polyester Yarns have become unremunerative and, as such, for reasons of economy and business expediency, the Company has decided to discontinue these processes of crimping, texturing, draw texturing, twisting, dying, coning and their inter-connected processes and activities. As a

result of this decision of the Company, your services are no longer required, being surplus to our requirement. You will, therefore, stand retrenched from service with effect from January 17, 1983."

45. The Company wrote letter dated January 21, 1983 to the Secretary to the Government, Labour Department informing the Government about its action of retrenchment. The information was sent as provided u/s 25F (c) of the Act. With the letter. Company enclosed An-nexure-1 wherein reasons for retrenchment have been stated. It has referred to each Plant separately. Nowhere in the reasons, closure of the Nylon Plant has even remotely been referred to. The Labour Commissioner, after receiving letter of the company, called upon the Company to appear before him by writing letter dated January 25, 1983 and asked the Company to show cause on the following points:

"Why the procedure detailed u/s 25H of Chapter V-B of the Industrial Disputes Act was not adopted before resorting to the retrenchment; and

Furnish the detailed information justifying the causes mentioned in the respective Annexure-A to the letter of the Company dated January 21, 1983."

The Company replied to the aforesaid letter on February 21, 1983. The Company asserted that the provisions of Section 25N of the Act were unconstitutional, therefore, its action was justified. The Company asserted that there was substantial compliance of the provisions of law when it sent notice of retrenchment and attempted to make payment of three months wages to the workmen. The company did not setup the case of closure of its Nylon Plant. Principle office bearers of the Company were served with the show cause notice dated February 19, 1983. They were called upon to show cause why action against the Company for violation of Section 25N of the Act and the Rules framed thereunder be not taken. Instead of replying to the show cause notice, the Company filed writ Petition No. 409/1983 on February 28, 1983. Therein also the company did not raise the ground that termination of the services of the workmen of Nylon Plant was on account of its closure. In the Writ Petition filed by the RTUK (213/1983) the company filed its reply. Therein also, case of closure has not been put up.

46. As indicated hereinabove, the Government in its suo motu exercise of powers u/s 10-11 of the Act, made reference by order dated August 25, 1983. Details regarding the order of reference has been referred to hereinabove. Nowhere the Government has referred to the question of closure of the Nylon Plant. In Point No. 3 of the dispute referred to the Tribunal, specific reference is made to the Writ Petitions No. 213/1983 and 409/1983. Thus, before the Government no dispute whatsoever was raised by the Company as regards closure of its Nylon Plant and subsequent termination of services of the workmen engaged therein.

47. Before the Government, till the Government passed the order of reference and till the Company filed its statement of claim before the Tribunal, nowhere it raised the plea that the Nylon Plant of the Company was closed. Infact the case

of the Company was that the workmen engaged in all the four Plants of the Company were laid-off. The Company pleaded that the lay-off declared by it in all the four plants, was legally valid and justified. Once there is a case of layoff, there cannot be the case of closure of an undertaking. Layoff and closure by their very definition, cannot stand together. It is contradiction in terms. The term "layoff as per its dictionary meaning and in its etymological sense, is "period during" which a workman is temporarily discharged". In Statutory sense, as per the definition of term "lay off" it means "failure, refusal or inability" of the employer on account of shortage of coal, power of raw materials or the accumulations of stock or break down of machinery or for any other reason to give employment to a workman". The effect of layoff on the contract of employment is not to sever the relationship of master and servant. The contract of employment during the period of lay-off goes under suspended animation. During the period of lay-off all that the employer can do is to suspend the contract of employment for the time being. The workmen continues to be in the muster roll of the employer and they have to be reinstated as soon as normal working is resumed. Thus, the essence of lay-off is that it is a temporary stoppage of work. As soon as the temporary stoppage of work comes to an end the employees are entitled to resume their service and receive full wages. On the other hand, closure by its very definition means permanent closing down of a place of employment or part thereof. Even if it is assumed for a moment that Nylon Plant of the Company may be considered a separate undertaking then also, there should be a case of permanent closing down of the same. No such case has even been raised. In fact the Government referred the dispute regarding lay-off even in the Nylon Plant, The Tribunal also decided the dispute regarding lay-off in the Nylon Plant.

48. Once a case is put up that there was a temporary cessation of work on account "of the reasons beyond the control of employer, the case of closure could never be pleaded as an incidental issue. Even if such case is pleaded, it would amount to changing the very basis of the reference. In other words it would amount to permitting the contention that the foundation of the dispute mentioned in the order of reference was not existing and that the true dispute was something else. This is not permissible, as per the provision of Section 10 (4) of the Act the Tribunal has to confine adjudication to the points of dispute referred and matters incidental thereto. By no stretch of reasoning the question with regard to closure of the Nylon Plant can be said to be an incidental dispute to the dispute of lay-off.

49. In this connection, reference may be made to the decision of Supreme Court in the case of Delhi Cloth and General Mills Co. Ltd. Vs. The Workmen and Others, Therein the points of dispute referred to, were as regards strike by the workmen and lock-out declared by the management. The Tribunal permitted the parties to show that there was no strike or sit-down strike. This decision of the Tribunal was challenged before the High Court by the Management. The high Court dismissed the Writ petition filed by the Management. The Supreme Court

considered the provisions of law particularly Section 10(4) of the Act and concluded that on the basis of the dispute referred to the Tribunal it was required to examine the facts and circumstances leading to the strike and the lock out and come to a decision as to whether one or the other or both were justified. The Supreme Court further observed that it would not be open to the workmen to question the existence of the strike or to the management to deny the declaration of lock-out. The parties could lead evidence to show that the strike was justified or that the lock-out was improper. The Supreme Court held that it was not open to the workmen to contend that there was no strike or that there was no sit-down strike.

50. The Supreme Court came to the aforesaid conclusion after considering the relevant provisions of law . In para 9 of the reported decision the Supreme Court inter alia observed that it is open to the appropriate Government to refer the dispute of any other matter appearing to be connected there with for adjudication. The Tribunal must confine the adjudication to the points referred and the matters incidental thereto. The Tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The Supreme Court further observed that the word "incidental" means according to Webster's New World Dictionary :

"happening or likely to happen as a result of or in connection with something more important being an incident; casual; hence, secondary or minor, but usually associated."

Thereafter the Supreme Court observed as follows:

"Something incidental to a dispute" must therefore mean something happening as a result of or in connection with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct... "

In view of the aforesaid settled legal position, the Company could not have raised the issue with regard to closure of Nylon Plant. Even if it did refer to the same in its pleadings, it was not permissible to the Tribunal to raise the issue regarding closure of Nylon Plant permitting the Company to raise the issue with regard to Nylon Plant to cut at the very root of the main dispute between the parties. The very foundation of the dispute is being taken away if the case of closure is permitted to be raised. Even according to the Company, it had declared lay-off in Nylon Plant. Therefore, the short question was whether the lay off was justified or not. Another question was whether the retrenchment of workmen was justified or not. The Company could not have displaced the very basis of this dispute and put up the case that there was a closure of Nylon Plant and therefore, there was no industrial dispute and, therefore, no question of retrenchment of workmen was required to be decided. Be it noted that the Tribunal could not have

abdicated its jurisdiction to adjudicate the point of dispute referred to it by allowing a party to raise points in its pleadings which would take away its jurisdiction. Neither the parties by their consent nor by their pleadings or otherwise could enlarge the jurisdiction conferred upon the Tribunal. Once a dispute is referred to the Tribunal, it is duty bound to adjudicate the same in accordance with law.

51. With utmost respect, the Tribunal had not read the decision of Supreme Court in Delhi Cloth Mills (supra) in its correct perspective. Again the Tribunal has not taken into consideration the observation made by the Supreme Court in the case of Delhi Cloth Mills (supra) with regard to the earlier decision of the Supreme Court in the case of The Management of Express Newspapers Ltd. Vs. Workers and Staff Employed under it and Others, The Supreme Court, while deciding the case of Delhi ] cloth Mills, considered in detail the case of Express Newspapers (supra). In para 14 of the reported decision, the Supreme Court, in terms, held that "the facts of that case (Express Newspapers v. Their Workmen) were very special and j the decision must be limited to those special facts" in view of this position of law, the Tribunal has committed grave error in raising the issue regarding closure of Nylon Plant. The Tribunal while doing so has acted without jurisdiction. Unfortunately the learned Single Judge has also fallen in the same error.

52. The Tribunal has committed error in not following the decision of Supreme Court in the case of Gammon India Limited Vs. Niranjan Dass, on which reliance was placed on behalf of the workmen. In that case the dispute referred to the Tribunal was as to whether the retrenchment of the workmen was unjustified or illegal and if so, what direction were necessary in this respect. The Tribunal held that the retrenchment of the Workmen was in contravention of the provisions of Section 25F of the Act inasmuch as the pre conditions laid down in the aforesaid provision were not complied with. The learned Single Judge of Delhi High Court held that since the Delhi Office of the Company was closed, the services of the workmen could be terminated. This decision was challenged before the Division Bench of the High Court. The Division Bench held that it was implicit in the reference itself that it was a case of retrenchment and validity of which was required to be examined. The Division Bench further held that therefore, it was not open to the learned Single Judge to change the base of the reference and to come to the conclusion that the case was one of the closure of the undertaking. The Supreme Court in the factual background of the case upheld the judgment of the Division Bench. In the almost similar fact situation in the instant case, neither in the notices dated January 15, 1983 and January 17, 1983 nor in any of the subsequent correspondence with the Government nor in the writ petitions, the Company whispered that its Nylon Plant was closed down. In our opinion, the Tribunal has wrongly distinguished the decision of Hon"ble the Supreme Court in the case of Gammon India Ltd. (supra) and has committed error in not following the same.

52A. Tribunal has"also observed that RTUK has challenged at the fag end of the arguments that when no issue regarding closure has been referred by Government to the Tribunal, it has no jurisdiction to decide that issue. Assuming this objection has been raised by RTUK at the fag end of arguments, but it is a pure question of law which can be raised at any stage of the proceedings, even it can be raised for the first time in appeal. There is no estoppel, inasmuch as conduct of parties, cannot confer jurisdiction on the Tribunal.

53. From the aforesaid resume of facts and the discussion with regard to settled legal position, it is evident that the dispute regarding closure of Nylon Plant was never raised by the Company before the Government. The Tribunal could not have removed the foundation of the dispute and raise altogether a new dispute which was never referred to it. Be it noted that neither the Tribunal nor the learned Single Judge have come to the conclusion that the question of closure of Nylon Plant of the Company was an incidental matter to the question of lay-off or to any other point of dispute referred to the Tribunal by , the Government vide its order dated August 25, 1983. Thus, the tribunal has acted without jurisdiction in raising the issue and has usurped the jurisdiction to raise the dispute and adjudicate upon the same which it never possessed.

Finding regarding closure grossly erroneous and unjustified.

54. Even on merits, the findings arrived at by the Tribunal as regards closure of Nylon Plant of the Company is grossly erroneous as being palpably unreasonable. As stated above, there could not be lay-off in an industrial undertaking which has been closed down. It was the case of Company that the Workmen engaged in its Nylon Plant were laid off on account of declaration of lay off by the Company. The definition of lay off contained in Section 2 (kkk) of the Act indicates that there has to be "failure, refusal or inability of an employer" to offer employment to its employees. This may be for the reasons of shortage of coal, power or raw material etc. or for any other connected reasons but the fact remains that there is only temporary cessation of work in the industrial undertaking. The result of this temporary cessation of work is not to break down the relationship of employment. For the time being it goes under suspended animation. The employees continue to be in the muster roll of the employer. They have got to be reinstated as soon as normal working is resumed. On the other hand, closure of an undertaking as defined u/s 2(cc) of the Act, means "the permanent closing down of a place of employment or part thereof. Thus there could never be a case of declaration of lay off as well as a case of closure. Both cannot stand together.

55. The case of Company was that earlier it manufactured Base Yarn as well as Texturised Yarn. On account of market conditions, it discontinued to manufacture Base Yarn but it continued to manufacture Texturised Yarn or to carry on the process of Texturising of Yarn. The manufacturing processes of Base Yarn were described as that of Crimping, Texturising, Draw texturising, Twisting, Dyeing, Coning, and the inter-connected processes. Since the Company decided to dis-continue the manufacturing of Base Yarn, it dis-continued the aforesaid

processes. The Tribunal, in para 6 of its award labelled these processes as "textile section". This label "textile section" for different types of processes, appears to be the innovation of the Tribunal. It may be innocuous, but it has misleading connotations. Simply because certain processes which were required for manufacturing Base Yarn, were discontinued, it could never be said that there was closure of the Nylon Plant. Here reference may be made to the total work force in each plant of the Company at Kota. As shown in para 3 hereinabove, in Nylon Plant the total number of workmen employed by the Company was 3373, (2209+1164). Only the workmen engaged in the aforesaid processes who were manufacturing Base Yarn, were retrenched. Even as per the case of the company the Nylon Plant as a whole has not been closed down. In this Nylon Plant itself out of 3373 workmen, 2209 workmen were retained in service. In respect of the total number of workmen engaged in , the Nylon Plant i.e., 3373 workmen, the Company declared lay off. Therefore, there was temporary cessation of work. This temporary cessation of work, by any stretch of reasoning cannot be equated with the permanent closing ; down of the place of employment or part thereof There was no warrant whatsoever for the Tribunal to label this sub-section of Nylon Plant wherein Base Yarn was being manufactured as "textile section" of the Company. In the entire award one gets an erroneous impression that there is a separate Textile Section. In fact this is the label given to the discontinuation of certain processes, which were undertaken by the Company for the manufacture of Base Yarn.

56. All that was done by the Company was that instead of manufacturing two types of yarn i.e.. Base Yarn and Texturising Yarn, the Company discontinued to manufacture Base Yarn. It continued the manufacturing of Texturising Yarn or in otherwords continued the process of texturisation of Yarn. In place of two types of Yarn one type of Yarn only was being manufactured by the Company.

57. In the aforesaid background, the workmen rightly relied upon the decision of Delhi High Court in the case of this very Company i.e., J.K. Synthetics v. Union of India and Ors. reported in 1981 (8) ELT 381. In that case it was held that when Single Ply Yarn was removed from the factory for sale, it was liable to duty at that stage. However if the process of manufacturing continues by taking the Single Ply Yarn to the stage of crimping Two Ply Yarn by one single integrated process without interruption, there was no removal of Yarn, at any intermediate stage, away from the process of manufacturing either for purpose of sale or for purposes of domestic consumption as envisaged by Rule 9(1) of the Central Excise Rules, 1944. Therefore, the Court held in favour of the Company that at the final stage, crimped Two Ply Yarn will be chargeable to excise duty. On the basis of this decision it was rightly submitted on behalf of the workmen that Yarn remained Yarn whether single or crimped and the thickness of the Yarn did not make it a different commodity. After discontinuing the various processes for manufacturing Base Yarn, the Company continued to engage itself in the process of texturisation of Yarn. Instead of manufacturing two types of yarn, the Company continued to manufacture only one type of yarn. This was the only

change brought about by the Company. Thus, even if it is assumed that it stopped manufacturing of one type of yarn and continued to manufacture another type of Yarn, then also it could never be said that the place of employment or any part thereof was permanently closed.

58. The learned Single Judge in para 132 of his judgment observed as follows:

"The texturising unit, no doubt was producing the Yarn and the activity of production of Yarn is not stopped, but Yarn has different species, and if one of such species is not produced then for the reason that the production of other species, continues, it cannot be said that there was no closure, so far as the species the production of which is stopped"

Thus, it is evident that the learned Single Judge has also not come to the conclusion that the place of employment or any part thereof, has been permanently closed down by the Company.

59. Even if one were to consider the case from the point of view of different criteria regarding separate undertaking, it would be evident that the Nylon Plant could never be said to be separate undertaking of the Company. Assuming for a moment that Nylon Plant may be considered to be a separate undertaking, different processes which were carried on for manufacturing one type of yarn could never be said to be a separate undertaking. From the point of view, of geographical proximity, unity of ownership, management and control, unity of employment, and conditions of service, functional integrity and general unity of purpose the different processes for manufacturing of Base Yarn, which were only part of the manufacturing activity of Nylon Plant as a whole, could never be said to be a separate undertaking. With utmost respect, the learned Single Judge has committed error while observing that closure of Texturised/Crimping Unit has not affected the working of other units and, therefore it could be said to be a separate unit. The functional integrity cannot be interpreted to mean inter-dependence. All other aspects i.e., geographical proximity, unity of ownership, management and control, unity of employment and conditions of services, if taken together and applied to the facts and circumstances of the case, they lead to only one conclusion that the Nylon Plant in which different processes were carried out for manufacturing Base Yarn, could never be said to be a separate undertaking. Here reference may be made to the observation made by the Tribunal in para 65 of its award. It was contended that the notices of retrenchment were signed by one Shri S.S. Mishra, who was not authorised to sign the retrenchment notices. The Tribunal observed that it did not find any force in this submission because "the Committee of the Board of Directors of the Company by resolution dated July 18, 1982 appointed him (S.S. Mishra) as occupier and conferred powers on him to retrench services of the workmen. Intimation of it was given to the Inspector of Factories. Shri F.C. Rastogi, RW-1 and the four Plant Managers have stated about Shri S.S. Mishra being the Occupier and as such the overall charge of the four Plants and the Managers of the four Plants were working under him. He had the requisite authority to pass

the order of retrenchment" It is thus evident that there was functional integrity, unity of ownership, management and control and there was unity of employment of condition of service. Thus even on facts, these distinct processes, which were required for manufacturing of Base Yarn, and which were discontinued, can never be said to be a separate undertaking. The approach adopted by the Tribunal is palpably unreasonable and not in accordance with the provisions of law. With utmost respect, the learned Single Judge has also fallen in the same error. Therefore, even on facts if we were required to consider the question as regards the closure of the Nylon Plant, we would not have hesitated to reverse and set aside the decisions of the Tribunal as well as that of the learned Single Judge arrived at in this behalf.

Section 25FFA of the Act requiring 60 days" notice to Government before closing down any undertaking

60. The provisions of Section 25FFA of the Act requires an employer, who intends to close down an undertaking, to serve a notice on the appropriate Government. Notice should clearly state the reasons of the intended closure of the undertaking. The Section reads as follows:-

"25-FFA Sixty days" notice to be given of intention to close down any undertaking.-

(1) An employer who intends to close down an undertaking shall serve, at least sixty days before the date on which the intended closure is to become effective, a notice, in the prescribed manner, on the appropriate Government stating clearly the reasons for the intended closure of the undertaking:

Provided that nothing in this shall apply to-

(a) an undertaking in which-

(i) less than fifty workmen are employed, or

(ii) less than fifty workmen were employed on an average per working day in the preceding twelve months.

(b) an undertaking set up for the construction of building, bridges, roads, canals, dams, or for other construction work of project.

(2) Notwithstanding anything contained in Sub-section (1), the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that provisions, of Sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order".

The Tribunal as well as the learned Single Judge have not considered the question as to whether the notice as required by the aforesaid Section was mandatory or not. After considering the rival submissions and the case law cited before him, the learned Single Judge in Para 148 of the judgment, held that since

finding of the Tribunal that it was a case of closure of Nylon Plant, the submission which have been made before him were only academic. The learned Single Judge observed as follows:-

"The moment it is found that the matter is regarding closure of the unit, then the industrial dispute comes to an end and therefore, it is not necessary that any decision should be given as to whether non-compliance of Section 25FFA and Section 25FFF by not giving the notice is directory or mandatory".

With utmost respect, the question with regard to the applicability of provisions of Section 25FFA cannot be said to be academic. If an employer intended to close down an undertaking, he is required to comply with the provisions of Section 25FFA of the Act which have been reproduced hereinabove. The underlying object behind the provisions is to prevent sudden closure and to give an opportunity to the Government to consider whether it should take any measure in respect of such intended closure in accordance with the provision of the Act. It may be noted that as far as the State of Rajasthan is concerned, the State Government has power u/s 10N of the Act to refer industrial dispute to the Tribunal either on a report made by the Conciliation Officer or otherwise. The precondition for making reference is that the Government should be satisfied that if the dispute continues, (a) a serious outbreak of disorder or a break of the public peace is likely to occur; or (b) serious or prolonged hardship to a large section of the community is likely to be caused; or (c) the industry concerned is likely to be seriously affected or the prospects and scope for employment therein curtailed; or (d) the dispute is not likely to be settled by other means; or (e) it is necessary in the public interest to do so. If the aforesaid provision of Section 25 FFA is considered directory, the underlying object of the provision would be frustrated. The provision is put in mandatory language inasmuch as the Legislature has used the term "shall". Moreover if the provision is held to be directory entailing no consequence or mere consequence of prosecution and penalty as provided in Section 30A of the Act, the provision would not be complied with by any one. The Legislature has not made this provision with an object to see that it becomes irrelevant. We are in respectful agreement with the view taken by the Bombay High Court in Maharashtra General Kamgar Union Vs. Glass Containers Pvt. Ltd. and another, In that decision, it is held that a closure effected without complying with the requirement of Section 25FFA of the Act is illegal and invalid. Similar view is taken by a Division Bench of Gujarat High Court in D.S. Vasavada, Textile Labour Association, Ahmedabad Vs. Regional Provident Fund Commissioner, Gujarat State, Ahmedabad, It is evident that non-compliance of the provision of Section 25FFA is made penal. Moreover, if the same is held to be directory, the very purpose of enacting the Section would be defeated. The Legislature cannot be imputed with intention of making provision which would not serve its purpose and would become irrelevant. In this view of the matter, even if one were to come to the conclusion that it was a case of closure of a part of the Nylon Plant in which 1164 workmen were engaged, then also the mandatory provision of Section 25FFA of the Act would be attracted.

Therefore, the termination of services of all these workmen would be required to be held as illegal and void. However, we make it clear that in the instant case we have come to the conclusion that the issue with regard to closure of a part of the Nylon Plant could not have been raised by the Tribunal and the Tribunal has acted without jurisdiction in raising the same. Moreover, the finding, given by the Tribunal and the learned Single Judge as regards closure is grossly erroneous. Therefore, the question of applicability of 25FFA and 25FFF would not arise. The aforesaid observations have been made by us making it clear that even if one were to hold that the case of the Company that it was a closure of a part of the Nylon Plant and therefore, the services of 1164 workmen were required to be terminated, then also the termination of their services would be illegal and void.

The case of 1164 workmen engaged in Nylon Plant at par with that of 1201 workmen

61. Once we have come to the conclusion that there was no issue with regard to the closure of Nylon Plant and the Tribunal could not have raised the same, the question becomes simple. All that is required to be seen by the Court is whether the retrenchment of 1164 workmen has been effected in accordance with the provisions of the Act. As far as the case of 1201 workmen is concerned, it has been held by the Tribunal as well as by the learned Single Judge that their services were terminated without complying with the provision of Section 25F of the Act. Provision of Section 25F of the Act postulates three conditions to be fulfilled by an employer before terminating the services of workmen as and by way of valid retrenchment:-

One month's notice in writing indicating the reasons for Retrenchment or wages in lieu of such notice;

Payment of compensation equivalent to 15 days average pay for every completed year of continuous service or in part thereof in excess of six months and notice to the appropriate Government in the prescribed manner.

Only the third condition, as regards the notice to the appropriate Government, has been held to be directory while the first two conditions have been held to be mandatory. This is the settled legal position. As far as 1201 workmen are concerned, the Tribunal held that the mandatory requirement of Section 25F of the Act were not complied with. In addition, the learned Single Judge held that the provisions of Sections 25H of the Act were applicable to the case of 1201 workmen. Admittedly the provisions of Section 25H of the Act are applicable to the Company which engages more than 300 workmen. Therefore, the provisions of Chapter V-B, of the Act, which makes special provisions relating to lay which makes special provisions relating to lay off and closure in case of certain establishment are applicable.

62. As discussed hereinabove, the retrenchment of 1164 workmen of the Nylon Plant was not a case of termination of their services on account of closure of the undertaking or part thereof. It was also a case of retrenchment. Therefore, the

provisions of Section 25N of the Act are attracted in their case also.

63. It is undisputed position that the company has not complied with the requirements of Section 25N of the Act. It was the case of Company that the provisions of Section 25N of the Act were unconstitutional. It was so held by the Madras High Court. The Company had obtained legal advice in this behalf. Therefore, it had not complied with the requirements of Section 25N of the Act. It is not discussed by the Company as to who was the jurist or legal expert who gave advice to the Company that since Madras High Court had held the said provision to be unconstitutional, the Company which is situated in the State of Rajasthan and which was required to consider the question of retrenchment of services of workmen engaged by it in Rajasthan, was not required to follow the provisions of law. It is not understood who opined that the writ of Madras High Court would run even in the territory of the State of Rajasthan. There is always a presumption that a validity enacted provision of law is in accordance with the constitutional provisions. This is so held by the Supreme Court way back in the year 1951 (see Chiranjit Lal Chowdhuri Vs. The Union of India (UOI) and Others, The State of Bombay and Anr. v. F.N. Baisara AIR 1951 SC 318 ) and various other decisions of the Supreme Court thereafter reiterating the same principle. However despite this settled legal position, the Company ventured to act upon the advice that the provisions of Section 25N of the Act were unconstitutional. If the Company took risk, it cannot save itself from the consequences flowing from the breach of the provisions. Now it is much more so when the Supreme Court has rejected its petition vide order dated March 17, 1993 relying upon the decision of Supreme Court in the case of Meenakshi Mills Ltd (supra)

64. Following the decision of Supreme Court in the case of Meenakshi Mills Ltd., (supra) the learned Single Judge has held that 1201 workmen were required to be reinstated in service with full back wages. The case of 1164 workmen engaged in Nylon Plant of the Company is at par with the other 1201 group of workmen. In their case also the provisions of Section 25N of the Act have not been complied with and the primary requirements of Section 25F of the Act have also not been complied with. Therefore, in respect of all these workmen also, it has got to be held that their termination of services as and by way of retrenchment is illegal and void. All of them are entitled to be reinstated in service with full back wages. Nothing is pointed out to deny them the benefit of full back wages.

64A. It was submitted on behalf of the Company that the direction given by the learned Single Judge to pay full back wages to 1201 workmen by modifying the direction given by the Tribunal, should be reversed and set aside. The learned Single Judge has rightly come to the conclusion that there was nothing on record to show that any workman was gainfully employed during the interregnum. When the services of workmen are terminated in contravention of the mandatory provisions of Sections 25F and or 25N, the termination of the services had got to be held to be void. When a workman is ordered to be paid full

back wages, he is not even sufficiently compensated for the monetary loss suffered by him. Whenever there is litigation with regard to the legality and validity of termination of service, the ultimate decision is taken by the Tribunal or Courts after a period of about 5 years, 7 years or 10 years or even about 12 years as in this case. During this period, the intrinsic value of money gets eroded on account of continuous inflationary forces working in the economy. At the end of 5 years, 7 years or 10 years as the case may be, what the workman gets in the shape of full back wages would not be even half of the intrinsic real value of the money. Moreover, for the entire period of unemployment he suffers the ignominy of having been rendered unemployed and idleness. His family members suffer from the pains of starvation and other hardships. He himself and his family members would not be in a position even to incur the necessary expenditure for medical treatment. The education of children would suffer. Thus, when the workman is ordered to be paid full back wages, he is in fact not compensated fully. Again, even after the order of Court the employer does not pay the amount of back wages as it has happened in this case. The learned Single Judge has given direction to pay full back wages to all the 1201 workmen as per his judgment and order dated March 25, 1994. Despite the fact that there is no stay order of the Court till the date of hearing and very probably till today, the workmen have not been paid their back wages as ordered by the learned Single Judge. Thus, the employer retains the amount of back wages as and by way of interest free loan without any security or any encumbrance. In the instant case, even with regard to all the 1166 workmen, the provisions of Section 25F of the Act as well as Section 25N of the Act have been contravened, as discussed hereinabove. We see no reason why they should not be ordered to be reinstated with full back wages. Of course, the workmen who have been reinstated or re-employed earlier and have been paid any amount as and by way of wages etc. the same amount shall be adjusted from the payment to be made to each one of them as per this judgment and order.

64-B. In order to avoid the hardships to the workmen and in order to see that the orders of the Court are complied with, conditions as regards the payment of interest is required to be imposed, if the amount of backwages and other monetary benefits flowing from the judgment and order of this Court are not paid within the stipulated time. If this is not done, no sane businessman would be willing to make the payment of the back wages and other monetary benefits to the workmen because he would be in a position to retain the amount as and by way of interest free loan. Once the amount is determined and liability is fixed, "the employer" will have no right whatsoever to retain the amount belonging to the workmen unless he pays the interest on the same. Therefore, suitable directions will be given hereinafter as regards payment of interest in case the amount of backwages and other monetary benefits are not paid within the stipulated time.

Settlement dated March 22, 1985 whether just and fair?

65. During the course of proceedings before the Tribunal, settlement dated March 22, 1985 was produced. The Tribunal did not accept the settlement and directed that voting be taken of all the eligible workmen to ascertain their wishes. Out of 4844 workmen who were eligible to vote, 3946 workmen exercised their right to vote. 102 votes were rejected as invalid. Thus there were 3844 valid votes. Majority of the workmen i.e. 1994 workmen voted against the settlement while 1850 workmen voted in favour of the settlement . The Tribunal did not accept the settlement and passed award. As indicated hereinabove, the thrust of arguments of the Company was that the award should have been passed in the terms of the settlement. It is further submitted that the settlement being just and fair this Court also should not disturb the same. On behalf of the RTUK and now on behalf of other Unions also, it is submitted that the settlement is not just and fair and the same could not be the basis of award of the Tribunal or that of the order that may be passed by this Court. The very first term of the settlement recites that:

"The Unions do not press the claim for the lay- off period over and above the compensation as per law"

In view of our finding that lay-off declared by the company was prelude to the mass retrenchment and it was a part of meticulously designed plan and, therefore, lacking in bona fides, the very first term of the settlement cannot be said to be just and fair.

66. The second term of settlement refers to closure of Textile section i.e. to say Nylon Plant which reads thus :

"Closure of textile section

2(i) the company had made it clear that it has closed down the textile section of Nylon Plant at Kota and that it has no intention to restart any of the processes or the machines in the said textile section which are closed. As a consequence thereof the services of 1164 workmen of the Company were terminated. The Unions however feel that the Company may in future restart textile section. In view of this rival contentions it is now agreed as under...."

Thus the very basis of the settlement is that there was closure of Nylon Plant or part thereof. We elaborately discussed this aspect in our judgment. We have come to the conclusion that the issue with regard to closure of Nylon Plant could not have been raised and could not have been decided by the Tribunal. The Tribunal has acted without jurisdiction in considering this point. In view of this finding given by us, this basic feature of the settlement regarding closure, is neither just nor fair. Again it may be noted that the language of the terms of settlement is in the dictating form as if the Company dictates. The opening words of the terms states "the Company has made it clear that it has closed down...." The very language of the settlement shows that the Company had upper hand and the workmen were not in a bargaining position.

67. Even with regard to other workmen whose services were terminated by way

of retrenchment, they were required to be treated on leave upto the date of settlement. This is also not in accordance with law. The entire settlement has proceeded on the footing that the Company was right in all respects and the workmen were in the wrong, while the correct position is otherwise. The Company acted under legal advice. It did not comply with the statutory provisions of law. It meticulously planned the layoff as well as mass retrenchment. It prepared the retrenchment notices simultaneously while declaring lay-off. Notices were prepared at Delhi Office of the Company and were dispatched from that office itself. By showing comparative statement of the amount payable to the workmen, the amount to be paid "as per law" and the amount payable as per settlement, an attempt has been made to show that the amount payable as per the settlement is more. The comparative statement furnished to the Court proceeds on the footing that the case of the Company as regards lay-off and closure was legal and valid. It also proceeds on the footing that the retrenchment of all the workmen was in accordance with law. If the settlement is accepted it would be against public policy. Instead of upholding the rule of law, it would amount to saying that there is no rule of law for those who have capacity to fight legal battles and drag the weaker section of society in a prolonged litigation. By no stretch of reasoning, the settlement can be said to be just and fair. Therefore, the contention that the Court should accept the settlement, has no merit and the same is hereby rejected.

#### Prosecution for breach of provisions of law

68. In the writ Petition filed by RTUK (213/1983) specific prayer is made that respondents No. 1 and 2 i.e. the State Government of Rajasthan and the Labour Commissioner cum Deputy Secretary, Labour Department, be directed to prosecute the Company for breach of the provisions of the Industrial Disputes Act, 1947. The Principle Office Bearers of the Company were served with a show cause notice dated February 19, 1983. The President and the Executive Director of the Company were called upon by the Labour Commissioner to show cause (i) why they should not be prosecuted for the retrenchment of workmen and (ii) for the offence punishable u/s 25Q read with Section 34 of the Act. After receipt of the notice, the Company filed Writ Petition No. 409/1983 on February 28, 1983. The Writ Petition filed by the Company was allowed by Full Bench of this Court. However, the same has been ordered to be dismissed by the Supreme Court as per judgment and order dated March 17, 1993. Once the petition filed by the Company has been rejected, we fail to understand why the State Government has not taken any action whatsoever pursuant to the show cause notice issued by it. At least in this proceeding nothing was brought to the notice of the Court that the State Government has taken further steps for prosecution of the Company and its Principle Office bearers as may be permissible in accordance with law. Simply because the Company obtained legal advice, it cannot absolve itself from the consequence of the breach of the provisions of the Act. If no action for prosecuting the Company and its Principle Office Bearers, as it may be permissible in accordance with law, is ordered, the Court would be exposed to

the charge that in this country two systems of law prevail. One for those who can take law in their hands and thereafter create confusing situation and by prolonging litigation may avoid the consequences of law, and the other system of law operating in the country would be against those who have no means to obtain justice and no means and capacity to fight injustice. Such is not the position of constitutional provision. We see no reason why the prayer regarding prosecution of the Company and its Principle Officer bearers, as it may be permissible in accordance with law, should not be granted.

Locus stahdi of RTUK and Maintainability of the Petition

69. Before the learned Single Judge, the Company raised the contention that the Union-RTUK had no locus standi to file the Petition. Similarly it was also contended that the workmen had alternative remedy to raise industrial dispute therefore, the Petition was not maintainable. It was also contended that there were disputed questions of fact which could not be decided in a Petition under Articles 226 and 227 of the Constitution. The learned Single Judge negatived all these contentions and over-ruled the objections raised by the company. In these proceedings the learned counsel appearing for the company have fairly conceded that the company does not press these objections. In view of the concession, all their points are not required to be gone into.

70. It has come on record that out of total 2367 workmen retrenched, now only 408 workmen are out of job. Other workmen have been either re-employed or reinstated in phases. However, the fact remains that services of all the 2367 workmen were terminated as and by way of retrenchment. This has been held to be in contravention of law and hence illegal and void. All the 2367 workmen are entitled to be reinstated in service with full back wages and all consequential benefits. The backwages and the consequential benefits shall be calculated on the basis that their services were never terminated and all throughout they were continuously in service and were entitled to all the benefits as if they continue to perform their duties. It is clarified that even in respect of the workmen who have already been re-employed or reinstated in service the Company shall make calculation of the amount of backwages and other consequential benefits payable to them on the basis that their services were never terminated and they were in service all throughout the interregnum and were entitled to all the benefits as if they were continuously in service. After making calculation of the amount payable to each of the retrenched workman on this basis, it shall be open to the company to adjust the amount of wages or other benefits paid to concerned workman.

71. In view of the aforesaid discussion and the reasons stated hereinabove in each matter, following order is passed:

i. Writ Petition No. 6248/1993 filed by the Company

The Petition is rejected with costs. The cost is quantified at Rs. 25,000/- (Rupees twenty-five thousand only). The amount of cost will be equally distributed

amongst all the respondent Unions. The amount of cost shall be paid to the Unions by the Company latest by January 14, 1996. If the amount is not paid by January 14, 1996, it shall carry interest at the rate of 18% per annum from the date of this judgment till the amount is paid.

ii. Appeals Nos 335/1994 and 338/1994 filed by the Company:

The appeals are ordered to be dismissed with costs. The cost is quantified at Rs. 25,000/- (Rupees twenty five thousand only). In both the Appeals, four different Unions of workmen have been cited as respondents. The amount of cost shall be equally distributed amongst all the Unions, No amount or cost shall be payable to the State Government of Rajasthan. The amount of cost shall be paid to the Unions by the Company latest by January 14, 1996, If the amount is not paid by January 14, 1996, it shall carry interest at the rate of 18% per annum from the date of this judgment till the amount is paid.

iii. Appeals No. 337/1994 and 179/1995 filed by the RTUK and Appeal No. 339/1994 filed by the J.K. Synthetics Mazdoor Union (affiliated with CITU) arising out of the judgment and order of learned Single Judge in Writ Petitions No. 213/1994 and 5106/1993.

(a) These appeals are allowed with costs throughout. The cost is quantified at Rs. 30,000 (Rupees thirty thousand only). Rs. 20,000 (Rupees twenty Thousand only) shall be paid by the Company to the RTUK and Rs. 10,000 (Rupees ten thousand only) shall be paid by the Company to the J.K.Synthetics Mazdoor Union (affiliated with CITU). The judgment and order passed by the learned Single Judge in Writ Petitions No. 213/1983 and 5106/1983 dated March 25, 1994, confirming the award passed by the Tribunal IT No. 81/1983, is reversed and set aside in so far as it confirmed the finding with regard to closure of so-called Textile section of the Company and in so far as it held that the termination of services of 1164 workmen of the Nylon Plant (so-called Textile section) of the Company was on account of closure.

(b) the finding with regard to strike and the direction with regard to the payment of wages for the strike period arrived at by the Tribunal and not interfered with by the learned Single Judge in Writ Petitions No. 213/1983 and 5106/1993, are not disturbed. The amount of cost as aforesaid, shall be paid to the Unions by the Company latest by January 14, 1996. If the amount is not paid by January 14, 1996, it shall carry interest at the rate of 18% per annum, from the date of this judgment till the amount is paid.

(c) The award passed by the Tribunal and the judgment and order passed by the learned single Judge with regard to lay off, is reversed and set aside. The lay off declared by the Company on January 10, 1983 and lifted on February 17, 1983, is held to be illegal and void. All the workmen shall be entitled to be paid full wages and other benefits for the entire period of lay-off and the Company shall make the payment of the same to all the workmen affected by lay-off latest by January 14, 1996. If the amount is not paid by January 14, 1996, it shall carry

interest at the rate of 18% per annum from the date of this judgment till the amount is paid.

(d) The judgment and order passed by the learned Single Judge confirming the award passed by the Tribunal as regards the retrenchment of 1164 workmen holding that there was no industrial dispute in respect of these workmen as they were engaged in Nylon Plant which was closed by the Company is reversed and set aside. It is held and declared that all these workmen were unlawfully retrenched and they are entitled to be paid by the company full backwages and other consequential benefits as if their services were never terminated and they continued to be in service all throughout.

(e) The judgment and order passed by the learned Single Judge dated March 25, 1994 in respect of 1201 workmen holding that they were unlawfully retrenched and they were entitled to be paid by the Company full back wages, is not disturbed and it is confirmed, it is directed that they shall be paid by the company full back wages and other consequential benefits as if their services were never terminated and they continued to be in service all throughout.

(f) It is further directed and clarified that the amount payable to each workman pursuant to the aforesaid directions shall be calculated and paid to each workman and to the respective respondent Unions, latest by January 14, 1996. The calculation of amount payable to each workman shall be made by the Company and statement thereof in respect of each workman shall be served upon the workman concerned together with the payment of money. If the amount is not paid by the aforesaid date it shall carry interest at the rate of 18% per annum from the date of this judgment till the amount is paid.

(g) The workmen who were not re-employed or reinstated in service and who are but of employment even today, shall be reinstated in service within a period of one month from the date of this judgment and order. However, all these workmen shall be entitled to claim full back wages from the date of this judgment even though they may not have been actually reinstated in service. It is further clarified that if some workmen are not actually reinstated in service within one month, they shall be deemed to have been reinstated in service of the Company after expiry of one month from the date of this order and they shall be paid by the Company their wages regularly every month as if they were actually reinstated in service. If the amount of wages are not paid by the Company on due date every month, they shall carry interest at the rate of 18% per annum from the date the amount of wages become due and payable till the amount of wages is paid.

(h) The respondent State Government of Rajasthan and the Labour Commissioner-cum-Deputy Secretary, Labour Department, are directed to prosecute the Company and its office bearers for contravention of the relevant provisions of the Act and the provisions of the Rules framed thereunder, as prayed for by the petitioner RTUK. The appropriate steps for launching

prosecution shall be taken by the concerned officer of the State Government forthwith. The judgment of learned Single Judge in this behalf is reversed and set aside.

72. The Appeals No. 337/1994 and 179/1995 filed by the RTUK and the Appeal No. 339/1994 arising out of the judgment and order passed in Writ Petitions No. 213/1983 and 5106/1983, are allowed to the aforesaid extent.